IN THE

Supreme Court of the United States

October Term, 1961

No. 856

JAMES EDWARDS, JR., and 186 Others,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA.

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above entitled case on December 5, 1961, rehearing of which was denied on December 27, 1961.

Citation To Opinions Below

The opinion of the Supreme Court of South Carolina, which opinion is the final judgment of that Court, is as yet unreported and is set forth in the appendix hereto, *infra* pp. 10a-15a. The opinion of the Richland County Court is unreported and is set forth in the appendix hereto, *infra* pp. 1a-9a.

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered December 5, 1961, *infra* pp. 10a-15a. Petition

for Rehearing was denied by the Supreme Court of South Carolina on December 27, 1961, *infra* p. 16a.

The Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257(3), petitioners having asserted below and asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

Whether petitioners were denied due process of law as secured by the Fourteenth Amendment to the Constitution of the United States:

1. When convicted of charges that their conduct, which was an assembly to express opposition to racial segregation on the State House grounds, "tended directly to immediate violence and breach of the peace" on a record containing no evidence of threatened, imminent, or actual violence.

2. When convicted of the common law crime of breach of the peace because exercise of their rights of free speech and assembly to petition for a redress of grievances allegedly "tended" to result in unlawful conduct on the part of other persons opposing petitioners' views.

Constitutional Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement

Warrants issued against petitioners charged them with common law breach of the peace on March 2, 1961 at the

South Carolina State Capitol grounds. The warrants alleged *inter alia* that they:

> ". . . did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, *all of which tended directly to immediate violence and breach of the peace* in view of existing conditions" (R. 3). (Emphasis supplied.)

The City Manager of Columbia who was supervising the police department at the time (R. 18-19) testified that "My official reason for dispersing the crowd was to avoid possible conflict, riot and dangers to the general public. . . ." (R. 16-17).

The Chief of Police testified that he took action "[t]o keep down any type of violence or injury to anyone" (R. 46; and see R. 53, 100, 101, 106, to the same effect).

The trial court sitting without a jury found petitioners guilty of common law breach of the peace. The Court imposed fines of $100 or 30 days in jail in most cases; in many of these cases one-half of the fine was suspended. In a few cases the defendants were given $10 fines or five days in jail (R. 78; 155; 217-218; 229-230).

The Richland County Court affirmed, principally upon authority of *People* v. *Feiner*, 300 N. Y. 391, 91 N. E. 2d 319, concluding there was a "dangerous" (R. 238) situation and actions which a "reasonable thinking citizen knows or should know would stir up passions and create incidents of disorder" (R. 239).

The Supreme Court of South Carolina affirmed on the ground that:

> "The orders of the police officers under all of the facts and circumstances were reasonable and motivated

> solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks."

In fact, the record furnishes no evidence of violence or even a threat of violence either by or against petitioners. Nor, indeed, does the record demonstrate that the petitioners, who were carrying their placards and walking about wholly within the State House grounds, had themselves stopped the sidewalks or traffic; only that bystanders were attracted who moved on at police request, and that traffic was somewhat slowed, a condition which did not presage violence. Either after arrest, or after the police order to disperse, petitioners sang hymns and patriotic songs in a singing, chanting, shouting response, as one might find in a religious atmosphere. All of these facts are developed at greater length, with appropriate record citations, below.

The genesis of this criminal prosecution lies in a decision of various high school and college students in Columbia, South Carolina to protest to the State Legislature and government officials against racial segregation:

> "To protest to the citizens of South Carolina, along with the Legislative Bodies of South Carolina, our feelings and our dissatisfaction with the present condition of discriminatory actions against Negroes, in general, and to let them know that we were dissatisfied and that we would like for the laws which prohibited Negro privileges in this State to be removed" (R. 138).

The State House is occupied by the State Legislature which was in session at the time (R. 37).

The Police Chief recognized that the demonstration was part of "a widespread student movement which is designed to possibly bring about a change in the structure of racial segregation laws and custom" (R. 49).

The petitioner who testified to this, James Jerome Kitron, a third year student at Benedict College (R. 142), stated that the petitioners had met at Zion Baptist Church on March 2, 1961, divided into groups of 15 to 18 persons (R. 135), and proceeded to the State House grounds which occupy two square blocks (R. 168). They are in a horseshoe shaped area, bounded by a driveway and parking lot which is "used primarily for the parking of State officials' cars" (R. 159). There is some passage in and out of this area by vehicular traffic and by people leaving and entering the State building. In addition, there are main sidewalk areas leading into the State Capitol on either side of the horseshoe area (R. 159). The horseshoe area "is not really a thoroughfare" (R. 123). It is an entrance and exit for those having business in the State House (R. 123). During the time of the demonstration no traffic was blocked going in and out of the horseshoe area; no vehicle made any effort to enter (R. 119).

The students proceeded from the church to the parking area in these small groups which were, as petitioner Kitron put it, approximately a half block apart, or as Chief Campbell put it, about a third of a block apart (R. 107), although at various times they moved closer together (R. 107, 169). But, "there never was at any time any one grouping of all of these persons together" (R. 111).

The police informed petitioners "that they had a right, as a citizen, to go through the State House grounds as any other citizen has, as long as they were peaceful" (R. 43, 47, 104, 162). Their permission, however, was limited to being "allowed to go through the State House grounds one time for purposes of observation" (R. 162). This took about half an hour (R. 163). As they went through the State House grounds they carried signs; such as "I am proud to be a Negro," and "Down with Segregation" (R. 141). The general feeling of the group was that segrega-

tion in South Carolina was against general principles of humanity and that it should be abolished (R. 138).

There is dispute in the record whether it was before or after arrest (Compare R. 38 with R. 139) that petitioners commenced singing religious songs, the "Star Spangled Banner" and otherwise vocally expressing themselves, but there is agreement that none of this occurred until at least after the police ordered petitioners to disperse (see R. 38, 92). As the City Manager described it, this was "a singing, chanting, shouting response, such as one would get in a religious atmosphere . . ." (R. 92). Thereafter the students were lined up and marched to the City Jail and the County Jail (R. 18).

The students were at all times well demeaned, well dressed, orderly (R. 29). The City Manager disagreed with this designation only to the extent that petitioners engaged in the religious and patriotic singing described above (R. 29).

Nowhere in the record, however, can any evidence be found that violence occurred, or that violence was threatened. The City Manager testified that among the onlookers he "recognized possible trouble makers" (R. 33), but "took no official action against [the potential trouble makers] because there was none to be taken. They were not creating a disturbance, those particular people were not at the time doing anything to make trouble, but they could have been." He did not even "talk to the trouble makers" (R. 34). When onlookers were "told to move on from the sidewalks" they complied (R. 38). None refused (R. 38).

The City Manager stated that thirty to thirty-five officers were present (R. 22). The Police Chief of Columbia had fifteen men in addition to whom were State Highway Patrolmen, South Carolina Law Enforcement officers, and three Deputy Sheriffs (R. 50). This was, in the City Manager's

words "ample policemen" (R. 168). But he believed that "Simply because we had ample policemen there for their protection and the protection of others, is no reason for not placing them under arrest when they refused a lawful request to move on" (R. 168).

The police had no particular "trouble makers in mind," merely that "you don't know what might occur and what is in the mind of the people" (R. 50). Asked "You were afraid trouble might occur; from what source?" the Chief replied "You can't always tell" (R. 54). Asked "Are you able, sir, to say where the trouble was?" he replied, "I don't know" (R. 54). None of the potential "trouble makers" was arrested and pedestrians ordered to "move on at [the Chief's] command" did so (R. 114).

So far as obstruction of the street or sidewalks is concerned, there is a similar absence of evidence. The City Manager testified that the onlookers blocked "the sidewalks, not the streets" (R. 32). But they cleared the sidewalks when so ordered (R. 34). While petitioners "probably did" (R. 109, 111) slow traffic in crossing the streets on the way to the grounds (R. 109), once there, they were wholly within the grounds (R. 188). They did not, as stated above, block traffic within the grounds (R. 53), no vehicle having made an effort to enter the parking area during this period of time. Their singing, however, was said by the City Manager to have slowed traffic (R. 92). And the noise, he said, was disrespectful to him (R. 99).

Columbia has an ordinance forbidding the blocking of sidewalks and petitioners were not charged under this ordinance (R. 54). Pedestrians within the grounds could move to their destinations (R. 48, 52, 195). Onlookers moved along when ordered to by the police (R. 34). There is no evidence at all, as stated in the charge that traffic congestion tended to any violence at all.

How the Federal Questions Were Raised and Decided Below

The petitioners were tried before the Columbia City Magistrate of Richland County in four separate trials on the 7th, 13th, 16th and 27th of March, 1961. At the close of the prosecution's case on the 7th of March, petitioners moved to dismiss the case against them:

> ". . . on the ground that the evidence shows that by arresting and prosecuting the defendants, the officers of the State of South Carolina and of the City of Columbia were using the police power of the State of South Carolina for the purpose of depriving these defendants of rights secured them under the First and Fourteenth Amendments of the United States Constitution. I particularly make reference to freedom of assembly and freedom of speech" (R. 76).

This motion was denied (R. 76). Following judgment of conviction petitioners moved for arrest of judgment or in the alternative a new trial relying, *inter alia*, on the denial of petitioners' rights to freedom of speech and assembly guaranteed by the Fourteenth Amendment to the Constitution of the United States (R. 79, 80). The motions were denied (R. 80).

Similar motions to dismiss and for arrest of judgment or in the alternative a new trial all claiming protection of petitioners' rights, under the Constitution of the United States, to freedom of speech and assembly in that the evidence showed petitioners "were included in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina" (R. 134, 201) were made at the trials on the 13th (R. 134, 152, 155), the 16th (R. 201, 214, 218) and the 27th (R. 228,

229, 230). These motions were all denied by the trial Court (R. 135, 152, 155, 201, 214, 218, 228, 229, 230).

Petitioners appealed to the Richland County Court where, by stipulation, the appeals were treated as one "since the facts and applicable law were substantially the same in each case" (R. 232).

The Richland County Court, upon the authority of *Feiner v. New York*, 300 N. Y. 391, 91 N. E. 2d 319 (R. 236, 237, 238) held:

> "While it is a constitutional right to assemble in a hall to espouse any cause, no person has a right to organize demonstrations which any ordinary and reasonable thinking citizen knows or reasonably should know would stir up passions and create incidents of disorder."

Petitioners appealed to the Supreme Court of the State of South Carolina, excepting to the judgment below as follows:

> "4. The Court erred in refusing to hold that the evidence shows conclusively that by the arrest and prosecution of appellants, the police powers of the State of South Carolina are being used to deprive appellants of the rights of freedom of assembly and freedom of speech, guaranteed them by the First Amendment to the United States Constitution, and further secured to them under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States" (R. 240).

The Supreme Court of South Carolina, in treating petitioners constitutional objections, stated (*infra* pp. 11a-12a):

> "While the appellants have argued that their arrest and conviction deprived them of their constitutional rights

> of freedom of speech and assembly . . . it is conceded in argument before us that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented to the trial Court. If their acts constituted a breach of the peace, the power of the State to punish is obvious. *Feiner* v. *New York*, 71 S. Ct. 303, 340 U. S. 315, 95 L. ed. 295."

The Supreme Court of South Carolina then proceeded to define breach of the peace generally and found it to include "an act of violence or an act likely to produce violence", *infra* p. 14a, and held that "the orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks", *infra* p. 15a.

Reasons for Granting the Writ

This case raises a question of recurring importance to a democratic society—the extent to which a state may limit public expression on issues of national importance and concern on the ground that such expression may lead to violence although none in fact has occurred or even been threatened—answered in the Courts below in a manner contrary to principles enunciated by this Court.

I

Petitioners' conviction on warrants charging that their conduct "tended directly to immediate violence and breach of the peace" is unconstitutional in that it rests on no evidence of violence or threatened violence.

It is settled that this Court cannot be concerned with whether this record proves the commission of some crime other than that with which petitioners were charged. Conviction of an accused for a charge that was never made is a violation of due process. *Cole* v. *Arkansas*, 333 U. S. 196; *De Jonge* v. *Oregon*, 299 U. S. 353, 362. It is equally true that an accused cannot be convicted "upon a charge for which there is no evidence." *Garner* v. *Louisiana*, 7 L. ed. 2d 207, 214; *Thompson* v. *Louisville*, 362 U. S. 199, 206.

Petitioners were convicted of common law breach of the peace, for expressing their disapproval of the racial policies of the State of South Carolina, upon warrants (R. 2, 3, 156, 157, 225, 226) charging that:

> "On March 2, 1961, on State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede normal traffic singing and parading with placards, failed to disperse upon lawful orders of police officers, *all of which tended directly to violence and breach of the peace* in view of existing conditions" (R. 2, 3, 157, 226). (Emphasis added.)

To sustain conviction on such a charge the Constitution requires proof of a substantial evil that rises far above public inconvenience, annoyance and unrest and a clear and present danger that that evil will occur. *Cantwell* v.

Connecticut, 310 U. S. 296, 311. The Supreme Court of South Carolina equated this constitutional standard with the offense charged, *infra* pp. 10a, 11a. These warrants charge petitioners with conduct which "tended directly to immediate violence and breach of the peace", and, therefore, they cannot be convicted on proof of less.

This record is, however, without proof of violence or threatened violence on the part of either the petitioners or the onlookers to their demonstration. The very most that may be said of petitioners' conduct is that they sang the "Star Spangled Banner," "America" and religious hymns loudly, though not in a contemptuous manner (R. 39) and stomped their feet when told to disperse. There is no testimony of any kind that any of the demonstrators or the onlookers made any remark or action or, indeed, gesture which could be considered a prelude to violence. Those who watched the demonstration appear to have been curious and nothing more.

When asked why he thought there was a possiblity of violence, the City Manager who ordered the arrests, testified he noticed some "possible troublemakers" among the bystanders (R. 33-36). But these "possible troublemakers", who were not identified, did nothing, said nothing and moved on when so requested by the police (R. 33-36, 38, 54, 175). Petitioners cannot be convicted on the totally unsubstantiated opinion of the police of possible disorder. *Garner* v. *Louisiana*, 7 L. ed. 2d 207. Cf. *Hague* v. *C. I. O.*, 307 U. S. 496, 516. Compared to the body contact and threats in *Feiner* v. *New York*, 340 U. S. 315, 317, 318; the riotous circumstances of *Terminiello* v. *Chicago*, 337 U. S. 1, 3 and the mob action in *Sellers* v. *Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851, this record hardly indicates even a remote threat to public order.

Although the police testified that petitioners' demonstration was stopped because the situation had become "potentially dangerous" and not because of traffic problems (R. 16-17, 46, 53, 100-101, 186), and petitioners were charged with conduct which "tended directly to immediate violence *and* breach of the peace", the Supreme Court of South Carolina considered interference with traffic as an element of petitioners' offense, *infra* p. 15a. Even if causing interference with traffic alone could uphold these convictions, the conclusory language of the Supreme Court of South Carolina concerning "impeding traffic" does not bear analysis.

The City Manager and various police officers testified that vehicular traffic was slowed on the city street in front of the State House Building by those attracted by the demonstration; that the lanes leading to the dead-end parking area directly in front of the legislative building were occasionally obstructed; that the sidewalk near the horseshoe area (and part of the State House grounds) where the demonstration took place was crowded; and that the sidewalk on the other side of the city street from the horseshoe was crowded with onlookers. On the uncontradicted testimony of the City Manager and the police officers, however, no one attempted to use the lanes leading to the parking area (R. 119, 123); while vehicular traffic on the city street was slowed, a police officer was dispatched and kept it moving (R. 45, 48); and the curious who had congregated to watch the demonstration moved on promptly when requested by the police (R. 38). Passage of pedestrians was not blocked on any sidewalk (R. 48, 52, 195). The police were in complete control of any traffic problems (R. 34, 48, 168, 22).

These facts do not permit an inference of violence or threatened violence. Petitioners were not charged with obstructing traffic (although there is a specific South Caro-

lina statute prohibiting obstruction of traffic on the State House Grounds, 1-417, Cumulative Supplement, 1952 Code of Laws, see *infra* p. 12a (R. 54)) but rather with conduct which "tended directly to immediate violence and breach of the peace." Without evidence of verbal threats, disobedience of police orders to move on, surging and milling or body contact, any conclusion that a group of bystanders, observing a demonstration in front of the State House would turn immediately violent, while at least 30 policemen were in attendance, is purely speculative.

Nor can a conclusion that petitioners' demonstration caused some slowing of vehicular and pedestrian traffic in and of itself be used to uphold these convictions. Petitioners were charged with the broad offense of common law breach of the peace. The Supreme Court of South Carolina adopted the general definition of breach of the peace found in 8 Am. Jur. 834, *infra* p. 14a, which definition extends to an act "of violence or an act likely to produce violence." Neither the general definition quoted by the Supreme Court of South Carolina or the remainder of the section on Breach of the Peace, 8 Am. Jur. 835, 836, 837, delineates as breach of the peace, the holding of a nonviolent demonstration which causes slower traffic on streets and sidewalks. Petitioners have been unable to locate any South Carolina decision applying breach of the peace to any such situation or related situation.[1] In this regard, Mr. Justice Harlan's words in *Garner* v. *Louisiana*, *supra* at p. 236, are here relevant:

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[1] Compare the South Carolina cases cited by the Supreme Court of South Carolina, *infra* p. 14a, all but one of which deal with repossessing goods sold on the installment plan. *State* v. *Langston*, 195 S. C. 190, 11 S. E. (2d) 1, the other case, upheld the conviction of a Jehovah's Witness who played phonograph records on the porches of private homes and used a soundtruck.

> "But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.'"

To convict petitioners because a byproduct of their expression was interference with traffic would be to open South Carolina's use of common law breach of the peace to the vice of vagueness. *Cantwell* v. *Connecticut*, 310 U. S. 296, 307, 308.

One of the purposes of rights of freedom of speech, assembly and petition for redress of grievances is to influence public opinion and persuade others to one's own point of view. *De Jonge* v. *Oregon*, 299 U. S. 353, 365; *Sellers* v. *Johnson*, 163 F. 2d 877, 881 (8th Cir. 1947) cert. denied 332 U. S. 851; *Cantwell* v. *Connecticut*, 310 U. S. 296, 310; *Whitney* v. *California*, 274 U. S. 357, 375 (Mr. Justice Brandeis concurring). Cf. *Rockwell* v. *Morris*, 10 N. Y. 721 (1960) cert. denied 7 L. ed. 2d 131. The exercise of these rights on controversial issues will inevitably lead to situations where numbers of persons hostile to the views expressed are in attendance. If it were otherwise, the salutory function of these rights would be lost and, ironically, successful attraction of others to hear and see your views would result in the denial of the right to express those views. To allow the police to use the very fact that there are other persons besides the demonstrators in attendance as the basis for a conclusion as to the likelihood of violence would be to subject these rights "to arbitrary suppression of free expression." *Hague* v. *C. I. O.*, *supra* at 516.

II

Petitioners' convictions were obtained in violation of their rights to freedom of speech, assembly and petition for redress of grievances in that they were convicted because their protected expression allegedly tended to lead to violence and breach of the peace on the part of others.

Mr. Justice Brandeis has written, *Whitney* v. *California*, 274 U. S. 357, 378, concurring opinion, that:

> ". . . the fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgement of the rights of free speech and assembly."

Petitioners demonstrated their desire for reform of the racially discriminatory policies of the State of South Carolina on the grounds of the State Legislative Building while the Legislature of the State of South Carolina was in session. It would be difficult to conceive of a more appropriate time and place to exercise the rights of freedom of expression. Cf. *Hague* v. *C. I. O.*, 307 U. S. 496, 515; *United States* v. *Cruikshank*, 92 U. S. 542.

Petitioners have argued that this record is barren of any evidence of conduct which was violent or threatened disorder. But even if this Court should hold that the evidence is adequate to avoid the rule of *Thompson* v. *Louisville*, *supra*, and *Garner* v. *Louisiana*, *supra*, such a determination still does not overcome the flaw in the convictions here. For these convictions were sustained below on the ground

that petitioners' conduct threatened violence and breach of the peace on the part of those who observed the demonstration. In the circumstances of this case, however, the duty of the police was to protect petitioners from the unlawful conduct of others, not to silence freedom of expression. This is especially true when the disorder is not actual and imminent but (as testified by the officers) "possible", and where, as here, large numbers of policemen are present and in control of the situation. *Hague* v. *C. I. O.*, 307 U. S. at 516; *Sellers* v. *Johnson*, 163 F. 2d 877, 881 cert. denied 332 U. S. 851. Cf. *Robeson* v. *Fanelli*, 94 F. Supp. 62, 69, 70 (S. D. N. Y. 1950).

If this is the duty of the police when there are potential threats of violence it must *a fortiori* be the duty of the police when traffic adjustment is involved. The minor inconveniences necessitated by traffic control and asking bystanders to move on cannot be enlarged into a justification for abridging the freedoms of expression so fundamental to the health of the democratic process. Petitioners have not been convicted pursuant to a statute evincing a legislative judgment that their expression should be limited in the interests of some other societal value, but under a generalized conception of common law breach of the peace. *Cantwell* v. *Connecticut*, 310 U. S. at 307. Here as in the *Cantwell* case, there has been no such specific declaration of state policy which "would weigh heavily in any challenge of the law as infringing constitutional limitations" (310 U. S. at 308). Petitioners were not charged with violating §1-417, Cum. Supp. 1952 Code of Laws of South Carolina, in which the Legislature did address itself to the problem of traffic control in the State House area.[2] In the absence

[2] §1-417 provides as follows:

"It shall be unlawful for any person:

1. Except State officers and employees and persons having lawful business in the buildings, to use any of the driveways,

of a state statute, narrowly drawn, South Carolina cannot punish expression which only leads to minor interference with traffic. Petitioners' "communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render [them] liable to conviction of the common law offense in question" *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; cf. *Thornhill* v. *Alabama*, 310 U. S. 88, 105, 106. See Statement, *supra*, p. 7.

This Court has found the interests of the State insufficient to justify restriction of freedom of speech and assembly in circumstances far more incendiary than these. *Terminiello* v. *Chicago*, 337 U. S. 1; *Hague* v. *C. I. O.*, 307 U. S. 496; *Kunz* v. *New York*, 340 U. S. 290. Cf. *Sellers* v. *Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851; *Rockwell* v. *Morris*, 10 N. Y. 721 (1961) cert. denied 7 L. ed. 2d 131. In this case there is no indication of imminent violence as in *Feiner* v. *New York*, 340 U. S. 315, 318, where a "pushing, milling and shoving crowd" was "moving forward."

The right to assemble peacefully to express views on issues of public importance must encompass security against being assaulted for having exercised it. Otherwise, the exercise of First and Fourteenth Amendment freedoms would be contingent upon the unlawful conduct of those

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alleys or parking spaces upon any of the property of the State, bounded by Assembly, Gervais, Bull and Pendleton Streets in Columbia upon any regular weekday, Saturdays and holidays excepted, between the hours of 8:30 A.M., and 5:30 P.M., whenever the buildings are open for business; or

2. To park any vehicle except in spaces and manner marked and designated by the State Budget and Control Board, in cooperation with the Highway Department, or to block or impede traffic through the alleys and driveways."

opposed to the views expressed.[3] Such a result would only serve to provoke threats of unlawful and violent opposition as a convenient method to silence minority expression. Such a result should not be sanctioned when important constitutional rights are at stake. *Cooper* v. *Aaron*, 358 U. S. 1, 14; *Terminiello* v. *Chicago*, 337 U. S. 1; *Sellers* v. *Johnson*, *supra*; *Rockwell* v. *Morris*, *supra*. "Carried to its logical conclusion, th[is] rule would result in civil authorities suppressing lawlessness by compelling the surrender of the intended victims of lawlessness. The banks could be closed and emptied of their cash to prevent bank robberies; the post office locked to prevent the mails being robbed; the citizens kept off the streets to prevent holdups; and a person accused of murder could be properly surrendered to the mob which threatened to attack the jail in which he was confined." *Strutwear Knitting Co.* v. *Olsen*, 13 F. Supp. 384, 391 (D. C. Minn. 1936).

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[3] See *Beatty* v. *Gillbanks* (1882) L. R. 9 Q. B. Div. (Eng) holding street paraders not guilty of breach of the peace for parade they knew would cause violent opposition.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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APPENDIX

IN THE RICHLAND COUNTY COURT

THE STATE

—v.—

JAMES EDWARDS, JR., *et al.*

ORDER

This is an appeal from conviction in magistrate's court of the common law crime of breach of the peace. There are almost 200 appellants, who were convicted by the magistrate, City of Columbia, Richland County, in four trials, trial by jury having been waived by the appellants in each case. By stipulation between counsel for the appellants and the counsel for the State, the appeals will be treated here as one since the facts and applicable law were substantially the same in each case. The trial Magistrate imposed fines upon each of the appellants ranging from $10.00 to $100.00. Due and timely notice of appeal from conviction was served and oral arguments were heard before me in open court. At my suggestion and with the agreement of counsel for both sides, written briefs were filed.

The appellants except to the finding of the Magistrate's Court and the fines imposed as a result of such finding of guilt upon the grounds that the State by the evidence failed to establish the *corpus delicti*, that the State failed to prove a *prima facie* case, that the evidence showed that the police powers of the State of South Carolina were used against the appellants to deprive them of

the right of freedom of speech guaranteed by the Constitution of the United States and the Constitution of South Carolina, and that the evidence presented before the Magistrate showed only that the appellants at the time of their arrests were engaged in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina.

Testimony before the Magistrate sets out the following series of events which culminated in the arrest of the appellants and the issuance of warrants charging them with breach of the peace. Shortly before noon on the third day of March, 1961, the appellants, acting in concert and with what appeared to be a preconceived and definite plan, proceeded on foot along public sidewalks from Zion Baptist Church in the City of Columbia to the State House grounds, a distance of approximately six city blocks. They walked in groups of twelve to fifteen each, the groups being separated by a few feet. Testimony shows that the purpose of this assemblage and movement of students was to walk in and about the grounds of the State House protesting, partly by the use of numerous placards, against the segregation laws of this State. The General Assembly was in session at the time.

Upon their approach to an area in front of and immediately adjacent to the State House building, known as the "horseshoe", the Negro students were met by police authorities of the State and the City of Columbia. After brief conversation between the leader of the students and police officers, the students proceeded to walk in and about the State House grounds displaying placards, some of which, at least, might be termed inflammatory in nature. There is some evidence also that a few groups of students were singing during this period. Such activity continued

for approximately 45 minutes during which the students met with no interference from anyone. Testimony from city and state authorities was to the effect that during this period of time, while the students were marching in and about the grounds without hindrance from officers, large numbers of onlookers, evidently attracted by the activity of the students, had gathered in the "horseshoe" area, entirely blocking the vehicular traffic lane and interfering materially with the movement of pedestrian traffic on the sidewalks in the area and on city sidewalks immediately adjacent. Testimony of city and state authorities was that vehicular traffic on the busy downtown streets of Gervais and Main, one running alongside the grounds and the other "dead-ending" at the State House, was noticeably and adversely affected by the large assemblage of students and onlookers which had filled the "horseshoe" area and overflowed into Gervais and Main Streets. Some testimony disclosed that in and about the "horseshoe" area it was necessary for the police to issue increasingly frequent orders to keep pedestrian traffic moving, even at a slow rate.

The Chief of Police of the City of Columbia and the City Manager of the City of Columbia testified that they recognized in the crowd of onlookers persons whom they knew to be potential troublemakers. It was at this time that the police authorities decided that the situation had become potentially dangerous and that the activities of the students should be stopped. The recognized and admitted leader of the students was approached by city authorities and informed that the activities of the students had created a situation which in the opinion of the officers was potentially dangerous and that such activities should cease in the interest of the public peace and safety. The

students were told through their leader that they must disperse in 15 minutes. The leader of the students, accompanied by the City Manager of Columbia, went from one group of students to the other, informing them of the decision and orders of the police authorities.

The City Manager testified that the leader of the students refused to instruct or advise them to desist and disperse but that instead he "harangued" the students, whipping them into what was described by the City Manager as a semi-religious fervor. He testified that the students, in response to the so-called harangue by their leader, began to sing, clap their hands and stamp their feet, refusing to stop the activity in which they were engaged and refusing to disperse. After 15 minutes of this activity the students were arrested by state and city officers and were charged with the crime of breach of the peace.

With regard to the position taken by the appellants that their activities in the circumstances set forth did not constitute a crime, the attention of the Court has been directed to several of our South Carolina cases upon this point, one of them being the case of *State* v. *Langston*, 195 S. C. 190, 11 S. E. (2d) 1. The defendant in that case was a member of a religious sect known as Jehovah's Witnesses. He, with others, went on a Sunday to the homes of other persons in the community and played records on the porches announcing his religious beliefs to anyone who would listen. He also employed a loud speaker mounted on a motor vehicle to go about the streets for the same purpose. Crowds of persons were attracted by this activity. No violence of any kind occurred. Upon his refusal to obey orders of police officers to cease such activity, the defendant was arrested and convicted for breach of the peace. The Court in upholding the conviction said:

"It certainly cannot be said that there is not in this State an absolute freedom of religion. A man may believe what kind of religion he pleases or no religion, and as long as he practices his belief without a breach of the peace, he will not be disturbed.

"In general terms, a breach of the peace is a violation of public order, the disturbance of public tranquility, by any act or conduct inciting to violence.

"It is not necessary that the peace be actually broken to lay the foundation of prosecution for this offense. If what is done is unjustifiable, tending with sufficient directness to break the peace, no more is required."

With further reference to the argument advanced by the appellants that they had a constitutional right to engage in the activities for which they were eventually charged with the crime of breach of the peace, regardless of the situation which was apparently created as a result of such activities, this Court takes notice of the New York State case of *People* v. *Feiner*, 300 N. Y. 391, 91 N. E. (2d) 319. In that case the Court of Appeals of the State of New York wrote an exhaustive opinion in a case which arose in that State in 1950, the factual situation being similar in many respects to the cases presently before this Court upon appeal.

Feiner, a University student, stationed himself upon one of the city streets of the City of Syracuse and proceeded to address his remarks to all those who would listen. The general tenor of his talk was designed to arouse Negro people to fight for equal rights, which he told them they did not have. Crowds attracted by Feiner began to fill up the sidewalks and overflow into the street. There was no

disorder, but in the opinion of police authorities there was real danger of a disturbance of public order or breach of the peace. Feiner was requested by police to desist. He refused. The arrest was then made and Feiner was charged and convicted of disorderly conduct.

In upholding the conviction, the New York Court quoting from *Cantwell v. State of Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352, said:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts, but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious."

The appellants in the present case have emphasized repeatedly in the trials and in their arguments before the Court and in their Brief that no one of them individually committed any single act which was a violation of law. It is their contention that they had a right to assemble and act as they did so long as they did no other act which was in itself unlawful. Apparently they reject the proposition that an act which is lawful in some circumstances might be unlawful in others. The New York Court in answering a similar contention made by the defendant in the *Feiner* case said:

"We are well aware of the caution with which the courts should proceed in these matters. The intolerance of a hostile audience may not in the name of order be permitted to silence unpopular opinions. The Constitution does not discriminate between those whose ideas are popular and those whose beliefs arouse opposition or dislike or hatred—guaranteeing the right of freedom of speech to the former and withholding it from the latter. We recognize, however, that the State must protect and preserve its existence and unfortunate as it may be, the hostility and intolerance of street audiences and the substantive evils which may follow therefrom are practical facts of which the Courts and the law enforcement officers of the State must take notice. Where, as here, we have a combination of an aroused audience divided into hostile camps, an interference with traffic and a speaker who is deliberately agitating and goading the crowd and the police officers to action, we think a proper case has been made out under our State and Federal Constitutions for punishment."

In the present case the appellants were not prevented from engaging in their demonstration for a period of approximately an hour, nor were they hindered in any way. After such activity had gone on for approximately 45 minutes, police officers saw that streets and sidewalks had been blocked by a combination of students and a crowd of 200 or 300 onlookers which had been attracted by their activities. They recognized potential troublemakers in the crowd of onlookers which was increasing by the minute. State and city authorities testified that in their opinions the situation which had been created by the students had

reached a point where it was potentially dangerous to the peace of the community. Instead of taking precipitous action even at this point, police authorities ordered the students to cease their activities and disperse, giving them the reasons for such order. The students were told that they must cease their activities in 15 minutes. The students refused to desist or to disperse. There is no indication whatever in this case that the acts of the police officers were taken as a subterfuge or excuse for the suppression of the appellants' views and opinions. The evidence is clear that the officers were motivated solely by a proper concern for the preservation of order and the protection of the general welfare in the face of an actual interference with traffic and an imminently threatened disturbance of the peace of the community.

Petitioning through the orderly procedures of the Courts for the protection of any rights, either invaded or denied, has been followed by the American people for many years. It is the proper and the correct course to pursue if one is sincerely seeking relief from oppression or denial of rights. While it is a constitutional right to assemble in a hall to espouse any cause, no person has a right to organize demonstrations which any ordinary and reasonable thinking citizen knows or reasonably should know would stir up passions and create incidents of disorder.

The State of South Carolina, the City of Columbia, and the County of Richland in the exercise of their general police powers of necessity have the authority to act in situations such as are detailed in the evidence in these cases and if the conduct of their duly appointed officers of the law is not arbitrary, capricious and the result of prejudice but is founded upo.. clear, convincing and common sense reasoning, there is no denial of any right.

Order

All exceptions of the appellants are overruled and the convictions and sentences are affirmed.

/s/ LEGARE BATES,
Senior Judge, Richland County Court.

Columbia, South Carolina,
July 10th, 1961.

Opinion of the Supreme Court of South Carolina

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

Respondent,

—v.—

JAMES EDWARDS, JR., *et al.*,

Appellants.

APPEAL FROM RICHLAND COUNTY, LEGARE BATES, COUNTY JUDGE

AFFIRMED

LEWIS, *A.J.*:

The appellants, one hundred eighty seven in number, were convicted in the Magistrate's Court of the common law crime of breach of the peace. The charges arose out of certain activities in which the appellants were engaged in and about the State House grounds in the City of Columbia on March 2, 1961. The only question involved in their appeal to this Court is whether or not the evidence presented to the trial Court was sufficient to sustain their conviction. Conviction was sustained by the Richland County Court, from which this appeal comes. While the appellants have argued that their arrest and conviction deprived them of their constitutional rights of freedom of speech and assembly, guaranteed to them by both the State and Federal Constitutions, it is conceded in argument before us that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented

to the trial Court. If their acts constituted a breach of the peace, the power of the State to punish is obvious. Feiner v. New York, 71 S. Ct. 303, 340 U. S. 315, 95 L. Ed. 295.

It is well settled that the trial Court must be affirmed if there is any competent evidence to sustain the charges and, in determining such question, the evidence and the reasonable inferences to be drawn therefrom must be viewed in the light most favorable to the State.

The testimony discloses the following events which resulted in the arrest of the appellants and the issuance of warrants charging them with breach of the peace.

Shortly before noon on March 2, 1961, a group of approximately 200 Negro students, after attending a meeting at the Zion Baptist Church in the City of Columbia, walked in groups of approximately fifteen each from the church along public sidewalks to the State House grounds, a distance of approximately six blocks. The purpose of the movement of the group to the State House was to parade about the grounds in protest to the General Assembly and the general public against the laws and customs of the State relative to segregation of the races, such demonstration to continue until, as the testimony shows, their conscience told them that the demonstration had lasted long enough. The General Assembly was in session at the time.

As they reached the State House grounds, the group was met by police authorities of the State and the City of Columbia. After a brief conference between their leader and police officers, the group proceeded to parade about the State House grounds. They continued to parade around the State House for approximately forty-five minutes during which time they met with no interference. During this forty-five minute period a crowd, evidently at-

tracted by the activities of the paraders, began gathering in the area in front of the State House, known as the "horseshoe", blocking the lanes for vehicular traffic through such area and materially interfering with the movement of pedestrian traffic on the sidewalks in the area and on sidewalks immediately adjacent. Vehicular traffic on the adjacent city streets was noticeably and adversely affected by the large assemblage of paraders and the crowd which had overflowed the horseshoe area into the adjacent streets.

The traffic situation can best be understood in relation to the area involved. Columbia is the State Capitol. Main and Gervais Streets in Columbia intersect in front of the State House. Gervais Street runs in an east-west direction, along the northern side of the State House grounds. Main Street, running north and south, intersects Gervais Street in front of the State House, where it dead-ends. The area referred to as the "horseshoe" is in effect a continuation of Main Street into the State House grounds. It is about ¼ block in length and about the width of Main Street. Situated at the center of the entrance to the "horseshoe" is a monument, with space on each side for vehicular traffic to enter and leave the area. It is reserved for parking of vehicles and, on the occasion in question, was filled with automobiles. It is a violation of law to block or impede traffic in the area. Section 1-417, Cumulative Supplement, 1952 Code of Laws. Sidewalks are located around the area for use by pedestrians.

The intersection of Main and Gervais Streets in front of the State House in Columbia is, by common knowledge, one of the busiest intersections in the State of South Carolina, both from the standpoint of vehicular and pedestrian traffic.

On the occasion in question, in addition to the approximately 200 paraders in the area, there had gathered approximately 350 onlookers and the crowd was increasing. With the paraders and the increasingly large number of onlookers congregated in the above area seriously affecting the flow of pedestrian and vehicular traffic, the officers approached the admitted leader of the paraders and informed him that the situation had reached the point where the activities of the group should cease. They were told through their leader that they must disperse within fifteen minutes. The parade leader, accompanied by the police authorities, went among the paraders and informed them of the decision and orders of the police. The leader of the group refused to instruct or advise them to disperse but instead began a fervent speech to the group and in response they began to sing, shout, clap their hands and stamp their feet, refusing to disperse. After about fifteen minutes of this noisy demonstration, the appellants, who were engaging in the demonstration, were arrested by State and City officers and charged with the crime of breach of the peace. Upon the trial, all of the appellants were identified as participants in the parade and activities out of which the charge arose.

The warrants issued against appellants charge that they "on March 2, 1961, on the State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to immediate violence and breach of the peace in view of existing conditions."

"Breach of the peace is a common law offense which is not susceptible to exact definition. It is a generic term, embracing 'a great variety of conduct destroying or menacing public order and tranquility'. Cantwell v. State of Connecticut, 310 U. S. 296, 60 S. Ct. 900, 905, 84 L. Ed. 1213, 128 A. L. R. 1352." State v. Randolph, 239 S. C. 79, 121 S. E. (2d) 349.

The general definition of the offense of breach of the peace approved in our decisions is that found in 8 Am. Jur. 834, Section 3 as follows: "In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquillity, by any act or conduct inciting to violence . . . , it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. . . .

"By 'peace,' as used in the law in this connection, is meant the tranquillity enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society."

See: Soulios v. Mills Novelty Co., 198 S. C. 355, 17 S. E. (2d) 869; State v. Langston, 195 S. C. 190, 11 S. E. (2d) 1; Childers v. Judson Mills Store, 189 S. C. 224, 200 S. E. 770; Webber v. Farmers Chevrolet Co., 186 S. C. 111, 195 S. E. 139; Lyda v. Cooper, 169 S. C. 451, 169 S. E. 236:

In determining whether the acts of the appellants constituted a breach of the peace, we must keep in mind that

the right of the appellants to hold a parade to give expression to their views is not in question. They were not arrested for merely holding a parade, nor were they arrested for the views which they held and were giving expression. Rather, appellants were arrested because the police authorities concluded that a breach of the peace had been committed.

The parade was conducted upon the State House grounds for approximately forty-five minutes. It was not until the appellants and the crowd, attracted by their activities, were impeding vehicular and pedestrian traffic upon the adjacent streets and sidewalks that the officers intervened in the interest of public order to stop the activities of the appellants at the time and place. Notice was given to appellants by the officers that the situation had reached the point where they must cease their demonstration. They were given fifteen minutes in which to disperse. The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks. The appellants not only refused to heed and obey the reasonable orders of the police, but engaged in a fifteen minute noisy demonstration in defiance of such orders.

The acts of the appellants under all the facts and circumstances clearly constituted a breach of the peace.

Affirmed.

TAYLOR, *C.J.*, OXNER, LEGGE and MOSS, *J.J.*, concur.

cause their activities "tended" to result in unlawful conduct on the part of other persons opposing petitioners' views. The two concluding paragraphs of the opinion set forth with clarity the Court's reasons for affirming the convictions:

STATEMENT

"The parade was conducted upon the State House grounds for approximately forty-five minutes. It was not until the appellants and the crowd, attracted by their activities, were impeding vehicular and pedestrian traffic upon the adjacent streets and sidewalks that the officers intervened in the interest of public order to stop the activities of the appellants at the time and place. Notice was given to appellants by the officers that the situation had reached the point where they must cease their demonstration. They were given fifteen minutes in which to disperse. The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks. The appellants not only refused to heed and obey the reasonable orders of the police, but engaged in a fifteen-minute noisy demonstration in defiance of such orders.

"The acts of the appellants under all the facts and circumstances clearly constituted a breach of the peace."

The opinion of the Supreme Court of South Carolina is in accord with principles enunciated by this Court in *Feiner v. New York*, 340 U. S. 315.

Denial of Petition for Rehearing

IN THE SUPREME COURT OF SOUTH CAROLINA

THE STATE,

Respondent,

—against—

JAMES EDWARDS, JR., *et al.*,

Appellants.

CERTIFICATE

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed December 5, 1961, and in my opinion there is merit in the Petition for Rehearing.

/s/ HAROLD R. BOULWARE
Harold R. Boulware

Columbia, South Carolina
December 13, 1961

(Indorsed on back of this document):

Petition denied.

s/ C. A. TAYLOR

s/ G. DEWEY OXNER

s/ LIONEL K. LEGGE

s/ JOSEPH R. MOSS

s/ J. WOODROW LEWIS